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May 27 2021

TO: DEQ-DWR-Wetlands-Public Listserv

FROM: Danny Smith, Director, Division of Water Resources

RE: Notice of Temporary Rules and Proposed General Permit in response to the new Navigable Waters Protection Rule: Definition of "Waters of the United States (WOTUS)"

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On April 21, 2020, the U.S. Environmental Protection Agency (EPA) and the Department of the Army published the [Navigable Waters Protection Rule](#) in the *Federal Register* to finalize a revised definition of "waters of the United States" under the Clean Water Act ("Federal Rule"). The new Federal Rule became effective on June 22, 2020. As a result of the new Federal Rule, certain wetlands are no longer subject to federal Clean Water Act jurisdiction. These wetlands remain protected by the State's Wetland Standards (15A NCAC 02B .0231), but, as a result of the new Federal Rule, the State 401 permitting mechanism is no longer available to authorize impacts. Impacts to these wetlands cannot be authorized by the state's existing Isolated Wetlands permitting program (15A NCAC 02H .1300, et. seq.) because they are not within the scope of those rules. Impacts to these wetlands, which formerly relied on the Federal Rule for a permitting pathway, are prohibited until a state permitting process is in place.

To provide a regulatory mechanism to authorize impacts to wetlands that are no longer federally jurisdictional and to provide regulatory certainty, the Environmental Management Commission has adopted temporary rules [15A NCAC 02H Section .1400](#). These rules become effective on May 28, 2021.

In order to provide an efficient permitting mechanism for activities subject to 15A NCAC 02H .1401 when impacts proposed are above the deemed permitted thresholds set out in 15A NCAC 02H .1405 and less than 1 acre of wetlands and/or 300 linear feet of stream, the Division of Water Resources (DWR) has developed a General Permit for Impacts to Federally Non-Jurisdictional Wetlands and Classified Surface Water. DWR invites public comment the proposed [General Permit](#).

The public is invited to comment in writing to the DWR on the proposed General Permit. Comments should be emailed to: [PublicComments@ncdenr.gov](mailto:PublicComments@ncdenr.gov); please include "Non-Jurisdictional General Permit" in the email's subject line. Alternatively, comments may be mailed to the NC Division of Water Resources, Attn: Sue Homewood, 450 W. Hanes Mill Rd., Winston-Salem, NC, 27107. **Comments must be received no later than close of business on June 28, 2021.**

This notice is available electronically at <https://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/401-wetlands-buffer-permits/401-public-notices>.



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